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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-495

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (AFL-CIO), ET AL.,
Petitioners,

v.

UNITED AIRCRAFT CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of Connecticut

REPLY FOR PETITIONERS

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PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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REPLY FOR PETITIONERS

If respondent had confined its Brief in Opposition (Opp.) to the *merits* of the Petition (Pet.), no reply would be necessary. Contrary to the Company's assertion (Opp. p. 8), question (a) is squarely presented, for when the court below determined that the state courts had jurisdiction, it did so on the view that *Linn* v. *United Plant Guard Workers,* 383 U.S. 53, was inapposite (A. 68, quoted at Pet. p. 14), rather than by accepting the trial court finding on which

respondent relies.[1] And respondent is simply engaged in wishful thinking when it seeks to avoid consideration of questions (b) and (c) (Opp. pp. 8-10) by claiming "that plaintiff has already established that it suffered substantial damages by reason of defendants' tortious conduct during the strike" (*id.* p. 10); *no* court has determined that respondent suffered *any* damage in consequence of those tortious acts which the state Supreme Court held attributable to the unions, and on the basis of which it sustained the punitive damage award. Thus, whatever injury respondent may ultimately show,[2] *Linn* establishes (even on respondent's narrowing of its holding to cases where a state rule allows "recovery without proof of actual harm" (Opp. p. 12)) that the present punitive damage award is contrary to federal law. Finally, the importance of the case is not affected by the circumstance that this award was made under the rubric "punitive damages" in a suit arising under Connecticut law (Opp. p. 14). The impact on the defense of federal rights is identical to that in the cases cited at Pet. pp. 19-20; since federal law declares the outer limits of liability for tortious strike misconduct (*Mine Workers* v. *Gibbs,* 383 U.S. 715), the

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[1] The trial court's Finding 778, that the suits were not used to restrain the exercise of federal rights, was not approved; rather, it was left standing because its "correction" was deemed not to "have a material bearing on the case." (A. 67).

[2] In order to recover damages on remand, the company will be required to prove that it was damaged by involuntary absences during the first five days of the strike or as a result of the minor and sporadic incidents in front of the plant which the trial court found after the injunctions were entered. And even if plaintiff were to establish some damages on that basis, these would be subject to a "credit for overtime work[ed] during the strike." (Opp. p. 5; see A. 83.)

unions' defenses below were federal in origin, and were so presented below.

What does necessitate this reply is respondent's baseless charge that the Petition for Certiorari was filed as an instrument of delay (Opp. p. 15). The filing of the Petition in no way prevents or delays "this litigation from being brought to a conclusion." (*Id.*) Respondent's assertion that "[a] further trial on the limited issues with respect to damages as specified by the Connecticut Supreme Court awaits disposition of this petition" (Opp. p. 5) is simply false. Whether or not certiorari is granted, those proceedings can go forward without regard to the present proceedings. That respondent knows this full well is shown by respondent's own insistence that the unions not notice the state court case for trial until the Petition for Certiorari is filed (see Appendix A, *infra*) and by the proceedings in the Superior Court after the mandate of the state Supreme Court issued.[3]

To give color to its claim of dilatoriness, respondent characterizes as "maneuvers in the trial court" the motions by which defendants raised the jurisdiction issue in the trial court. Of course, if these motions—proper under state procedure—had not been made, respondent would now contend that the issue was not

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[3]After the Motion for Reargument was denied by the Supreme Court of Connecticut, the mandate went to the trial court for the remand proceedings. That court held a calendar call at which the Company stated it was not ready for trial, a position in which defendant unions joined, neither party having anticipated the unusual disposition of the case by the Connecticut Supreme Court. It was determined that the case would be placed on the calendar for trial at the request of either party. It was never suggested that the proceedings in this Court on the punitive damage issue would stay the proceedings in the trial court.

preserved—an objection which respondent actually does advance with respect to questions (b) and (c).[4]

In sum, respondent's felt necessity to prejudice consideration of the Petition for Certiorari by misstating its purpose (Opp. p. 15) and effect (Opp. p. 5) betrays counsel's wholly justified apprehension that the Petition could not successfully be opposed on the merits. Accordingly, it is plain that if the judgment below is final, the Petition for Certiorari should be granted.

Respectfully submitted,

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[4] The Motion for Reargument (Opp. pp. 16-21) is itself the best demonstration that questions (b) and (c) were clearly and concisely raised below. Of course, a petition for rehearing would be an imposition on the Court if it developed any issue in the fullness appropriate for a brief on the merits; but, contrary to Opp. p. 7, it is well settled that such a petition is a timely occasion for raising a federal question which is created by an unexpected decision of the state's highest court. See e.g., *Brinkerhoff-Faris Trust and Savings Co.* v. *Hill*, 281 U.S. 673, 677-8. That the disposition of this case by the state Supreme Court was unexpected is shown at Pet. pp. 8-9 and is not disputed by respondent.

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APPENDIX A

LAW OFFICES OF
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TELEPHONE 288-3591

July 30, 1971

S. Robert Jelley, Esq.
Wiggin & Dana
205 Church Street
New Haven, Connecticut

Re: United Aircraft Corp. v. I.A.M.

Dear Mr. Jelley:

This is to confirm our understanding with respect to the I.A.M.'s request for an extension of time within which to file a petition for certiorari with the United States Supreme Court in connection with the two cases currently waiting retrial on damages in the Superior Court in and for the County of Hartford.

We agreed that the time for the filing of the petition may be extended for sixty days from the required date but that until the petition is actually filed neither party would have the matter set down for trial.

I trust this is in line with your understanding.

Thank you for your cooperation and courtesy in this matter.

Sincerely yours,

NORMAN ZOLOT
Norman Zolot

cc: Mozart Ratner, Esq.

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C.R.